

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:02CR164
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
)	
JOSE G. DIAZ-DIAZ,)	
)	
Defendant.)	

This matter is before the Court on the motion filed by the Defendant, Jose G. Diaz-Diaz, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 ("§ 2255 motion") (Filing No. 534).

On March 13, 2007, this Court denied the Defendant's previous § 2255 motion. (Filing Nos. 525, 526.) The Court denied the Defendant's motion for reconsideration. (Filing No. 528.) When a second § 2255 motion is filed:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255.

Therefore, the Defendant must proceed accordingly with the Eighth Circuit Court of Appeals. Without the required certification from the Eighth Circuit, this Court cannot consider the merits of the Defendant's second § 2255 motion. Therefore, the Defendant's § 2255 motion is denied.

IT IS ORDERED:

1. The Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Filing No. 534) is denied;
2. A separate Judgment will be issued denying the § 2255 motion; and
3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 30th day of October, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge